

Midwest Industrial Supply, Inc.)	CASE NO. 5:08CV 1374
1101 – 3 rd St. S.E.)	
Canton, OH 44707)	JUDGE OLIVER
)	MAGISTRATE JUDGE BAUGHMAN
)	
Plaintiff,)	<u>SOILWORKS LLC’S</u>
)	<u>MOTION TO POSTPONE AND</u>
)	<u>EXCUSE THE DEFENDANT’S</u>
-vs.-)	<u>ATTENDANCE AT THE CASE</u>
)	<u>MANAGEMENT CONFERENCE</u>
)	
Soilworks, LLC,)	
681 North Monterey Street)	
Suite 101)	
Gilbert, Arizona 85233)	
)	
Defendant.)	

Plaintiff's Complaint was filed June 6, 2008. In response, Soilworks filed its Motion on July 3, 2008. Pursuant to Local Rule 7.1(d), Midwest's response deadline to Soilworks' Motion is due August 7, 2008. Accordingly, pursuant to Local Rule 7.1(e), Soilworks' reply will be due

ten days after receipt of Plaintiff's response. The Court set CMC for August 15, 2008. Consequently, Soilworks' reply may not be due for filing until August 25, 2008, as late as ten days after the scheduled date for the CMC.

Soilworks' Motion asserts, in part, that this Court lacks jurisdiction over Soilworks, because Soilworks does not conduct any business in Ohio or have minimum contacts with Ohio. Should this Court require Soilworks' participation and attendance at the CMC before ruling on whether or not this Court is authorized to exercise jurisdiction would be, at best, prejudicial. Further, because this Court may grant any part of Soilworks' Motion, any decisions made at the CMC will be moot. Therefore, it follows that a CMC, held prior to this Court's decision on Soilworks' Motion, may prove to be a waste of judicial time and resources. Accordingly, this Court should postpone the CMC until such time that it has had an opportunity to rule on Soilworks' Motion.

Additionally, pursuant to Local Rule 16.3(b), the attendance of the parties is required unless good cause is shown that such attendance would present an "undue hardship." For the reasons stated in Soilworks' Motion, namely that Soilworks' lacks ties to the State of Ohio, mandatory attendance at any CMC would be inherently burdensome. Soilworks is an Arizona Corporation that does not have an office, agency or representative physically present in Ohio. Soilworks does not have a physical plant, employees, bank accounts or assets located in the State of Ohio. Soilworks is currently party to a suit, involving Midwest, which is pending before the United States District Court for the District of Arizona. Soilworks is already expending time, costs and energy as a party to that suit, covering the same subject matter. (In fact, Plaintiff raises in this action, identical claims previously disallowed in the Arizona Action). To require that Soilworks attend the CMC, when it has in no way subjected itself to the protection or benefit of the laws of the State of Ohio, creates an undue burden. Accordingly, Soilworks' parties should be excused from attending the CMC.

WHEREFORE, Soilworks respectfully requests this Court postpone and reschedule the Case Management Conference until such date that this Court has had the opportunity to issue an order regarding Soilworks' Motion.

Respectfully submitted this 4th day of August, 2008.

KUTAK ROCK LLP

/s E. Scott Dosek

E. Scott Dosek (AZBN #012114)
8601 North Scottsdale Road, Suite 300
Scottsdale, AZ 85253
Telephone: (480) 429-5000
Facsimile: (480) 429-5001
Scott.dosek@kutakrock.com

LOCAL COUNSEL:

Elizabeth A. Ratliff (#0075673)
VORYS, SATER, SEYMOUR AND PEASE LLP
2100 One Cleveland Center
1375 East Ninth Street
Cleveland, OH 44114
Telephone: (216) 479-6103
Facsimile: (216) 937-3737
earatliff@vorys.com

Attorneys for Defendant Soilworks, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 4th, 2008, the foregoing “Soilworks LLC’s Motion to Postpone and Excused Defendant’s Attendance at the Case Management Conference” was filed electronically. Notice of this filing will be sent by operations of the Court’s electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court’s system.

/s Amy S. Fletcher